

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
FTX TRADING LTD., *et al.*, . Case No. 22-11068 (JTD)
Debtors. . (Jointly Administered)
•
FTX TRADING LTD. AND . Adv. Pro. No. 23-50437 (JTD)
MACLAURIN INVESTMENTS LTD., .
Plaintiffs, .
v. .
LOREM IPSUM UG, PATRICK . Courtroom No. 5
GRUHN, ROBIN MATZKE, AND . 824 North King Street
BRANDON WILLIAMS, . Wilmington, Delaware 19801
Defendants. . Wednesday, January 24, 2024
•

APPEARANCES:

For the Debtors: James Bromley, Esquire
Steven Ehrenberg, Esquire
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(APPEARANCES CONTINUED)

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1 (Proceedings commence at 2:01 p.m.)

2 THE COURT: Good afternoon, everyone. This is
3 Judge Dorsey.

4 Can everyone hear me okay?

5 (No verbal response)

6 THE COURT: Can anyone hear me?

7 (No verbal response)

8 THE COURT: They can't hear me.

9 (Pause)

10 THE COURT: Okay. Let's try this again, can
11 everybody hear me okay?

12 MR. BROMLEY: Yes, Your Honor.

13 THE COURT: Okay. This is Judge Dorsey. We are
14 on the record in FTX Trading Ltd., Case No. 22-11068,
15 Adversary Proceeding 23-50437. This is a status conference
16 requested by the Court.

17 I will go ahead and turn it over to debtors'
18 counsel.

19 MR. BROMLEY: Good morning, Your Honor -- or good
20 afternoon, Your Honor, I'm sorry, its James Bromley of
21 Sullivan & Cromwell.

22 Can you hear me okay?

23 THE COURT: I can. Thank you.

24 MR. BROMLEY: Thank you, Your Honor.

25 I am here with my partner, Steven (??), who will

1 be addressing the issues relating to the adversary
2 proceeding. I will be addressing the issues relating to the
3 status conference related to the appointment of an examiner.

4 THE COURT: Okay.

5 MR. BROMLEY: Your Honor, we submitted a letter to
6 the Court yesterday setting forth our positions with respect
7 to the decision of the Third Circuit. It is our view that
8 what we should be doing today at the status conference is
9 setting a process to, first, determine the scope, the degree,
10 the duration, and the cost of an examination as well as, in a
11 transparent and public fashion, setting a process for the
12 selection and appointment of an examiner.

13 Your Honor, we are sitting here in February -- or
14 almost in February of 2024, nearly a year after the hearing
15 on the examiner motion. That was the subject of the appeal
16 by the U.S. Trustee. There has been a huge amount of
17 progress and a different set of facts that presents itself
18 today than we were facing when we were standing in front of
19 the Court in February of 2023.

20 Your Honor, while Mr. Ray's first day declaration,
21 which was filed on November 17th of 2022, set forth a number
22 of very troubling issues that were discovered at the time of
23 the commencement of the case, it is fair to say that the
24 issues that were identified by Mr. Ray in that first day
25 declaration have been rectified.

1 The situation that the Court has been -- that has
2 been described to the Court by Mr. Ray in that declaration
3 and in his testimony at the examiner hearing are
4 fundamentally different then they are today then they were at
5 that point in time. There has been -- the five issues that
6 are objectives that Mr. Ray had set forth in his first day
7 declaration have largely been achieved.

8 Most importantly, Your Honor, we are sitting here
9 today within several months of an exit from Chapter 11. An
10 exit from Chapter 11 that will take place with recoveries to
11 creditors that, frankly, could not have been imagined at the
12 time that the examiner hearing was held or at the time that
13 the motion for the appointment of an examiner was filed by
14 the United States Trustee.

15 Your Honor, it's the view of the debtors that its
16 critically important that we take into account not just the
17 substantial work that has taken place, but also the fact that
18 we are faced with just a number of months before emergence.
19 So, while the Third Circuit clearly stated that the
20 appointment of an examiner in these cases is mandatory under
21 1104, the Third Circuit also made it very clear that it lies
22 in the discretion of this Court to determine the scope, the
23 duration, the degree, and the cost of that examination.

24 So, Your Honor, our view is that the interested
25 parties, and that should be a limited group of interested

1 parties, being the debtors, the committee, and the United
2 States Trustee, should make submissions to the Court with
3 respect to those four elements, the four elements that were
4 set forth by the Third Circuit, and then have an attempt to
5 sit down in a meet and confer to determine whether or not we
6 are able to reach agreement. If we are unable to reach
7 agreement to have the Court decide on those four elements:
8 the scope, the degree, the duration, and the cost of the
9 examination.

10 THE COURT: Okay. Let me hear from committee
11 counsel.

12 MR. PASQUALE: Good afternoon, Your Honor. Ken
13 Pasquale from Paul Hastings for the official committee. With
14 me is my partner, Chris Hansen.

15 Your Honor, we too submitted a letter with our
16 thoughts with respect to the examiner motion. I won't get
17 into the details of the proposal. We do generally agree with
18 Mr. Bromley, a lot has happened in the case over the last
19 year. The Third Circuit, itself, in its decision recognized
20 the Court's discretion to set the parameters of the
21 investigation.

22 We have two main concerns, and the Third Circuit
23 noted them in the opinion on page 15. I will quote:

24 "By setting the investigation's parameters the
25 Bankruptcy Court can ensure that the examiner is not

1 duplicating the other parties efforts and the investigation
2 is not unnecessarily disrupting the reorganization process."

3 Those are our two concerns. We don't want to see
4 the examiner -- the expense, excuse me, of the examiner's
5 investigation impacting the estates. This has been done.
6 The investigation and (indiscernible) has been done. So, we
7 think its narrowing the scope and certainly the cost that has
8 to be taken into account.

9 Perhaps even more importantly, as Mr. Bromley
10 eluded to, we are on track for a plan confirmation process in
11 the next few months. The examiner process really should
12 proceed in parallel, but it really should not in any way slow
13 down that confirmation solicitation process so that
14 distributions can be made to creditors.

15 As far as our proposal, Your Honor, I think I will
16 wait on that and come back to that as Your Honor addresses
17 the other parties.

18 THE COURT: Okay. Let me hear from the U.S.
19 Trustee.

20 MS. RICHENDERFER: Good afternoon, Your Honor.
21 Linda Richenderfer from the Office of the United States
22 Trustee.

23 Your Honor, I think we have a big disconnect here.
24 I think that the proposal that was set forth in the debtors'
25 letter, respectfully, ignores the appellate rules of

1 procedure, the bankruptcy code, and the practice and the
2 process that has been followed by this Court.

3 First, to address the issue of the appellate
4 process. The issue of the appointment of the examiner will
5 not be back into this Court until the mandate is issued.
6 This is something I have had to learn an awful lot about in
7 the LTL cases and especially LTL case number one. The issue
8 does not come back before Your Honor until the mandate
9 issues. And the mandate does not issue until after
10 expiration of rehearing deadlines because the United States
11 Trustee is a party to this case, it's actually a 45-day
12 period, not a 14-day period.

13 So, it would be 52 days after last Friday before
14 we would see the mandate coming from the Third Circuit;
15 however, under Rule 41(b), as in *boy*, of the Appellate Rules
16 of Procedure the Third Circuit can respond to a motion to
17 extend or shorten the length of the mandate period. Now the
18 mandate period there, of course, is to protect parties that
19 want to make application for rehearing or hearing *en banc*.

20 I saw in the debtors' letter that they are
21 pronouncing that they are not going to seek that relief. I
22 don't see that in the committee's letter. I don't know if
23 there are other parties who participated in the appeal who
24 feel differently. That would be a reason why there should be
25 a motion filed with the Third Circuit regarding issuance of

1 the mandate and then parties in interest can respond.

2 It is also a subject that the U.S. Trustees Office
3 does not have the authority to speak on because when it comes
4 to appellate matters, that is handled by the Appellate Civil
5 Division of DOJ, for the United States Trustee. There was a
6 different grouping of people, in fact, who did the brief and
7 who argued the case in front of the Third Circuit. So, this
8 would be the people who would have to be involved in this
9 process with the debtors or the committee, whoever might want
10 to take up the laboring ore, but this is something that needs
11 to occur before Your Honor can issue any orders, quite
12 frankly, regarding this because the issue is not in front of
13 this Court.

14 I have to say, you know, we all were excited when
15 we saw the opinion last Friday, but then we stopped and said,
16 oh, no, its not an immediate, oh, we go back to the Court.
17 It's we got to go through this mandate process first.

18 After the mandate is issued, then we have to look
19 at Bankruptcy Code Section 1104(d), as in David, which talks
20 about the process of appointing the examiner. I am going to
21 borrow from the Third Circuit here. The Third Circuit said,
22 you know, complex case, but straightforward issue for appeal.
23 Complex case here, Your Honor, but a straightforward process
24 that is laid out in 1104(d) for how we go about appointing an
25 examiner, deciding scope, duration and also the budget.

1 Your Honor, our office has been through this
2 already with you in the Cred case. That case was handled by
3 our assistant U.S. Trustee, Mr. McMahon, back when he was a
4 trial attorney. It's the same process I followed, Your Honor,
5 in PWR when Your Honor ordered the appointment of a Chapter
6 11 Trustee; very similar process. Its set forth there.

7 First, 1104(d) says that the United States
8 Trustee, after consultation with the parties in interest,
9 appoints an examiner subject to Court approval. So, Your
10 order would enter an order stating the U.S. Trustee is
11 ordered to appoint an examiner, that is what you did in Cred,
12 I have all the Cred pleadings, and then we responded, went
13 through the process, and believe me, Your Honor, we are very
14 popular people right now in terms of our email traffic.

15 Mr. Vera, Mr. McMahon, Mr. Hackman, and myself
16 receive emails daily from people who are interested in
17 serving in this role. We are not wasting time. We are
18 conducting some due diligence in the meantime. We are not
19 just sitting here, but we can't do anything until Your Honor
20 issues the order ordering us to make the appointment.

21 We will have a very robust pool to choose from.
22 We will be looking at the skill set, the background of the
23 people, and we will be consulting with the parties in
24 interest as we are ordered to do so under Section 1104(d) of
25 the Bankruptcy Code.

1 So, after an examiner is chosen by the U.S.
2 Trustee then we go through the application process. Again,
3 something very simple. We did it in Cred. Information is
4 supplied to the Court, it goes out on notice, everyone knows
5 who the candidate is, they know information about them
6 because its very important that the candidate be
7 disinterested. Then if Your Honor is satisfied with that
8 then Your Honor issues the order appointing that person as
9 the examiner.

10 Then usually that order, as in Cred, said that the
11 examiner works with parties in interest and comes up with the
12 scope, comes up with the budget, comes up with the duration.
13 They must be involved in that process. They have to be
14 involved in that process.

15 Your Honor gave the examiner, in that case it was
16 Mr. Stark, a certain number of days to come back with a plan,
17 scope, duration, and budget. And it was filed under notice.
18 So, it went out. And parties are able to comment on it. No
19 one is going to be acting in a vacuum here. We are not doing
20 things behind closed doors. That is the great thing about
21 the examiner and that is one of the things the Third Circuit
22 said, the examiner's report will be public. The examiner
23 needs to rely on the cooperation of the party here. He
24 doesn't want to have to come running back or she doesn't want
25 to have to come running back to this Court saying I can't get

1 this from the committee or I can't get this from Mr. Ray.
2 The examiner will need to be involved with those parties,
3 will need to be consulting with them.

4 Now, as to scope just a couple of very broad
5 brushed comments at this point in time. The Third Circuit
6 spoke about the scope in a very general way, first of all.
7 It said that the investigation, under 1104(c)(2), is
8 different from the debtors and the UCC conducting an
9 investigation. You are working with a disinterested party.
10 Not working with the debtor-in-possession conducting an
11 examination. And believe me, Your Honor, not to say anything
12 derogatory about any of these groups, and I am also relying
13 on the Third Circuit's opinion here, but they are creditors,
14 they are the debtors. This is an independent disinterested
15 party.

16 Even the Third Circuit pointed out that under
17 1107(a) the debtor-in-possession can't perform the duties of
18 an examiner in --

19 THE COURT: Can you hold on one second, Ms.
20 Richenderfer.

21 MS. RICHENDERFER: Certainly, Your Honor.

22 (Pause)

23 THE COURT: Apparently, Ms. Richenderer, there are
24 some people who wanted to be in the virtual courtroom, but
25 they are not picking up the audio. I don't know why, but its

1 apparently an outside issue, not a court issue. So, there is
2 nothing I can do about that at this point. So, we will go
3 ahead and go forward. Go ahead.

4 MS. RICHENDERFER: Okay. Just as an aside, Your
5 Honor, at first, we had trouble signing in because we were
6 using Chrome and we moved over to Microsoft Edge and got us
7 in with no problem seeing and hearing everyone. I just pass
8 that suggestion out there, but if people can't hear then they
9 don't hear me saying that.

10 So, I mean the goal of the examiner is to issue a
11 public report. The Third Circuit also got a little more
12 granular about scope and said there are issues of potential
13 conflicts of interest arising from the debtors' counsel
14 serving as prepetition advisors. It didn't make any judgments
15 one way or the other and I am not suggesting that we debate
16 the issues today. I know that was addressed in the debtors'
17 letter to the Court. It was an observation made by the Third
18 Circuit and it would be something that the examiner may look
19 into.

20 There was another issue that was also commented on
21 by the Third Circuit, which was employees of FTX who are
22 still in place at the company, and I know that the debtor has
23 spoken about looking into it. There were certain areas in
24 which the debtor, in its letter to Your Honor, even admitted
25 that they haven't completed their evaluation of certain

1 things. But, again, this is premature to be talking about
2 the scope today. We have to get the mandate, Your Honor has
3 to issue the order, we need to comply with 1104(d), we need
4 to have the examiner come back with their report -- sorry,
5 with their gameplan so to speak.

6 You know, in general there is the corporate
7 activity, the decision-making process. Nobody wants to
8 reinvent the wheel, that is for sure. And I would note
9 though that the last time Mr. Ray filed a report on
10 investigation information was back in June of 2023. I know
11 those things are noted in the debtors' letter, but there came
12 a point in time when those reports stopped.

13 Again, the Third Circuit strongly said that the
14 difference here, there is a big difference, and its
15 independent the examiner, the examiner is disinterested, and
16 the examiner will issue a report that will be placed on the
17 docket. You know, coming up with different formats, which,
18 quite frankly, Your Honor, I think have so many steps in them
19 I couldn't -- I lost track after a while at different steps
20 the debtors were suggesting. Its there in 1104, anybody who
21 wants the Cred case number I will certainly give it to them.

22 Your Honor, that was a very simple process that
23 got us to the examiner being appointed. I think it took
24 about four months, if you look at the dates on the orders,
25 but we had Christmas in between and I do recall that that was

1 a little bit of -- it leant in the process a little bit with
2 the holidays being in there. But no need to reinvent the
3 wheel. In fact, you can't reinvent the wheel. 1104(d) tells
4 us what to do and it orders the U.S. Trustee to consult with
5 the parties in interest when conducting its evaluation. We
6 do not feel that we can undertake anything until mandate
7 issues and Your Honor issues the order.

8 I don't know if Your Honor has any questions about
9 that.

10 THE COURT: No questions.

11 MS. RICHENDERFER: Okay. Thank you, Your Honor.

12 THE COURT: Mr. Bromley, any response?

13 MR. BROMLEY: Yes, Your Honor. There are certain
14 things that the U.S. Trustees Office says that we certainly
15 don't disagree with. But to start off with the mandate
16 issue, there are three parties that participated in the
17 appeal: that is the official committee of unsecured
18 creditors, the debtors, and the United States Trustee.

19 It seems to us to be a relatively simple thing to
20 stipulate together that the mandate period should be reduced
21 and that the mandate should issue immediately. So, we don't
22 see that as being an obstacle whatsoever. And if the U.S.
23 Trustees Office is saying that they want to take the full 45
24 days that they are allocated under the statute that is,
25 frankly, disturbing to us because we are moving very quickly

1 towards confirmation of a plan of reorganization. And as Mr.
2 Pasquale said, one of the things that the Third Circuit said,
3 based on the current record, is that this should not -- this
4 exercise with respect to the examiner should not get in the
5 way of confirmation.

6 Now with respect to the 1104(d) exercise I don't
7 think anything that we said in our letter is inconsistent
8 with 1104(d). We want that process with the United States
9 Trustee to be open and transparent, that's all. We want that
10 to -- and we want the scope and the degree, the duration, and
11 the cost to be determined first because the exercise here,
12 Your Honor -- yes, there are lots of phone calls that are
13 coming in, emails, not just to the U.S. Trustees Office but
14 to the debtors and the creditors committee as well because
15 there are lots of people out there in our business who would
16 love to be able to get into this exercise and see this as a
17 possibility generating a lot of fees at the expense of our
18 creditors.

19 We need to make it clear to everyone out there
20 exactly what the scope should be before that exercise takes
21 on a life of its own because unless that is set first our
22 view is that all of the candidates are going to be
23 incentivized to have a very large mandate and suggest a large
24 mandate. So, our view is that we should consult with the
25 U.S. Trustees Office and the committee about what that

1 mandate should be. If we can reach agreement on it then we
2 should come to the Court with an agreed stipulation on scope
3 and then move to the appointment of the examiner.

4 There is nothing in 1104(d) that says that that is
5 not appropriate or not authorized, right. So, the fact that
6 one other case that the U.S. Trustee had in front of Your
7 Honor with respect to the appointment of an examiner moves in
8 a slightly different doesn't mean that it can't operate in a
9 different order here.

10 Now with respect to what the U.S. Trustees
11 Office's statements with respect to scope she stated I don't
12 want to talk about scope, I don't want to talk about scope,
13 and then proceeded to talk about scope, right. So, I am not
14 going to go into the issues with respect to scope, but the
15 fact is that the dicta that is cited by the Third Circuit has
16 no basis in the current set of facts.

17 They relied on two things, Your Honor. They
18 relied on Mr. Ray's declaration on the first day of the case
19 and to insinuate today that the same people who brought this
20 company into bankruptcy are to date in place, in office,
21 running that company is simply impossible to believe, right.
22 That is incorrect and it was incorrect in February of 2023,
23 its incorrect today.

24 The idea that the U.S. Trustees Office is a year
25 later continuing to sing that same song is highly

1 disappointing. There hasn't been a single question from the
2 U.S. Trustees Office in the last 12 months about anyone who
3 was supposedly involved in the case prior to the filing and
4 whether they still have roles. The fact is that none of them
5 do. They are all long gone.

6 And completely ignoring the fact that while the
7 debtor itself may not be disinterested in the class, in the
8 sense of the word, Your Honor has already held evidentiary
9 hearings that have determined that Mr. Ray and his team are
10 disinterested, that the counsel that have been pointed to
11 represent him are disinterested.

12 The Office of the United States Trustee withdrew
13 their objection to all of the counsel that were appointed.
14 There was no objection prosecuted by the Office of the U.S.
15 Trustee against my firm, against Quinn Emanuel, against Paul
16 Hastings, against Young Conaway, against Landis Rath & Cobb,
17 zero. Those orders were entered finding disinterestedness
18 and those orders are final, unappealable.

19 So, we cannot ignore what has taken place. So, its
20 critically important, in our view, that as we are moving
21 forward let's get this mandate issue solved. If the U.S.
22 Trustees Office or the Department of Justice in Washington
23 are somehow incapable of accepting the fact that they won and
24 shortening the period for the mandate that, I think, speaks
25 volumes. So, I am hopeful that that is simply a misstatement

1 by the Office today.

2 We should move forward quickly to get that
3 mandate, put squarely in Your Honor's Court and discretion to
4 form the scope of this investigation, and the timeline, and
5 the cost because, Your Honor, on the 31st of January we are
6 going to be before you telling you in substantial detail
7 information that goes to the recoveries -- to creditors --
8 not just creditors, but victims because this is a case that
9 is very different than other cases.

10 We are talking about people who suffered as a
11 result of the frauds of Sam Bankman-Fried and his cronies.
12 What has happened over the past year is that the debtors have
13 relentlessly provided information to all of the regulators
14 including the prosecutors in the Southern District of New
15 York and Mr. Bankman-Fried was convicted in less than four
16 hours after a six-week trial, which was a trial of the
17 decade.

18 When Mr. Williams, who is the U.S. Attorney for
19 the Southern District of New York, stood on the steps outside
20 of the Courthouse he said this is what relentless looks like.
21 We investigated from top to bottom and side to side
22 everything that went on in connection with the fall of FTX
23 and we have brought justice by convicting Mr. Bankman-Fried
24 and getting the plea agreements from Ms. Ellison, Mr. Singh,
25 from Mr. Wang, and Aslam. Watch out everyone else in the

1 crypto world because we are going to do the same thing to
2 you.

3 What has happened in the past 12 months is
4 absolutely astonishing in terms of taking what had truly been
5 a dumpster fire and a crime scene and turning it into quick,
6 speedy, and convictions through the cooperation of these
7 debtors, and their professionals and the prosecutors. We
8 also have done the same with the Securities & Exchange
9 Commission, the CFTC, dozens of regulators around the world
10 and within the United States.

11 We are engaged right now with the CFTC with
12 respect to their multi-billion-dollar claim, the IRS with
13 their multi-billion-dollar claim. This is now a freight train
14 that is moving towards confirmation that is going to deliver
15 very fast and very substantial recoveries to creditors who a
16 year ago thought they were going to get cents on the dollar.

17 So, the fact that there was a victory on Friday
18 for the U.S. Trustees Office before the Third Circuit, okay.
19 Now we all know what 1104(c) says. I still disagree with it,
20 but we're not going to appeal it and we're not going to seek
21 en banc review. But the time is now to decide what is the
22 scope, and what is the cost, and what is the duration.

23 With all due respect, Your Honor, the United
24 States Trustees Office should simply say, thank you, we won,
25 and sit down with the parties to decide those key issues.

1 And what I have heard today, unfortunately, doesn't sound
2 like that.

3 THE COURT: Mr. Pasquale.

4 MR. PASQUALE: Thank you, Your Honor.

5 First, just for the record, the Committee has no
6 intention of seeking (indiscernible) review. We agree with
7 Mr. Bromley, we stipulate to borrow. As I said earlier, we
8 are most concerned with speed to keep on that confirmation
9 schedule.

10 Just one thing on scope and the process, Your
11 Honor. We did propose in our letter a slightly different
12 process by which the examiner would be appointed first and
13 then meet with the parties. We don't feel strongly either
14 way, but that scope needs to be discussed among the parties.
15 As I said earlier, we do think it needs to be limited, but
16 the process needs to proceed. So, in essence, Your Honor, I
17 don't understand the delay in waiting 56 days to get this
18 process moving. Thank you.

19 THE COURT: Well, I think Ms. Richenderfer has
20 said that she would be willing to work with the parties to
21 see if we can get that mandate issued faster.

22 MS. RICHENDERFER: Your Honor, if I could correct?
23 I don't think I misstated; I think I was misheard
24 and I was, quite frankly, at first, was surprised that
25 Sullivan & Cromwell came to Your Honor and didn't first talk

1 about the mandate and how we were going to address it, so we
2 felt it necessary to bring up that issue at the hearing
3 today.

4 The point is that absent anything being done, it
5 will be 52 days. Our point is something needs to be done.
6 Under 41(b) of the Appellate Rules of Procedure, something
7 can easily be done and we would just ask that the Committee
8 and the debtor get in touch with, or we will put them in
9 touch with the Civil Appellate Division of DOJ to speak on
10 behalf of the U.S. Trustee's Office and it should be done as
11 soon as possible.

12 If the Committee and the debtors had already
13 decided that they were not going to take further action, they
14 could have started that process on Monday if they wanted to.
15 So the point was we were going to drag things out. We
16 don't want to drag things out. The point was, we can't miss
17 that step. We can't run the risk of something being done
18 that, then, is without authority because the mandate has not
19 issued. It must issue first.

20 And thinking that we should just sit down and be
21 grateful that the Third Circuit reads it the way that the
22 Sixth Circuit does, the way the U.S. Trustee's Office does, I
23 don't think that maybe counsel understands what the true goal
24 and what my responsibilities are as a member of the U.S.
25 Trustee's Office. We will comply with 1104(d), as

1 Mr. Pasquale, I think it was, just said, let's get the
2 examiner first, then talk about scope, then talk about
3 duration, and then talk about amount.

4 Everyone is assuming that for some reason, that
5 everyone -- that we, the U.S. Trustee, are going to be in
6 there fighting for something that starts from the get-go.
7 Maybe these are just precautionary tales that they're
8 throwing out to try to put us off that notion. We don't know
9 what the scope will be. We need to get the examiner in.
10 That is the way that it's done. That is the way that the
11 Committee has suggested it be done.

12 Let's get the examiner. We will be consulting
13 with parties in interest, including the debtors and the
14 Committee, regarding the identification of the examiner and
15 we will do it once the mandate has been issued and once Your
16 Honor can issue an order to us, directing us to appoint an
17 examiner.

18 THE COURT: All right. So I agree with the
19 trustee that the Code does provide the process by which an
20 examiner gets appointed; it's 1104(d), which governs the
21 appointment by the trustee after consultation with parties in
22 interest and subject to approval by the Court.

23 Rule 2007.1(a) also sets forth that the motion to
24 appoint an examiner is governed by Rule 9014, which makes it
25 a contested matter. And I think it's not just the motion to

1 ask for the appointment of an examiner, but I think the
2 appointment of the examiner itself is a contested matter
3 which can be heard by the Court, in accordance with
4 Rule 9014.

5 Rule 2007.1(d) lays out the process for the
6 approval of an examiner after the U.S. Trustee identifies who
7 that examiner is going to be appointed.

8 In this case, I know in Cred I appointed an
9 examiner, asked the examiner to provide a scope for the
10 investigation that was going to be conducted. In Cred, that
11 process began early in the case. In this case, I probably
12 know more about this case than anybody who's going to be
13 appointed as an examiner knows at this point in time.

14 And the Third Circuit Court said that I have the
15 broad discretion to determine the scope, the degree, the
16 duration, and the cost of any examination.

17 I think it is important in this case, because I do
18 believe that this needs to be done in a way that does not
19 reinvent the wheel, does not redo investigations that have
20 already been done. My view is, at this point in time -- let
21 me just back up here. I've made some notes here about all of
22 this stuff.

23 Yeah, nothing in the Code or the Rules describes
24 the process for determining the scope, degree, duration, or
25 cost of an examination; that's up to the Court, so I have to

1 make those determinations. Not the examiner, not the U.S.
2 Trustee, not the debtors, not the Committee; it's up to me to
3 decide that. But as I said, it's under 9014, so it can be an
4 adversarial process, if necessary. Hopefully, the parties
5 can meet and confer.

6 And I think we can go through -- we can start this
7 process now, even though the trustee can't appoint an
8 examiner at this point and even though I can't approve the
9 appointment of an examiner and I can't approve what the scope
10 of any examination is going to be, we can start this process
11 so that we can figure out how long this is going to take, how
12 much it's going to cost, before we get too far down the road.

13 So here are -- I thought I would try to shortcut
14 the process a little bit, at least, by giving my preliminary
15 thoughts on my view on the scope of an examination. My view
16 is the examiner should review the investigations that have
17 already been concluded or that are currently underway by the
18 debtors, the Committee, and any third parties, including the
19 SEC, the DOJ, the Southern District of New York, the CFGC,
20 anybody else who's investigated these debtors, and provide a
21 report that outlines those investigations and what their
22 findings were and make recommendations for any additional
23 investigations, if any, that the examiner believes would be
24 necessary or helpful to the Court or the estate.

25 If the examiner recommends additional

1 investigations, the report should include an explanation of
2 the nature of the investigations, the process for conducting
3 that investigation, and the projected costs and how the
4 investigation will benefit the Court and the estate. That
5 should be in a summary format. It should be something that
6 could be done fairly quickly. I would say probably within 30
7 or 45 days after appointment, we could get that kind of a
8 report from an examiner and then, if there is requests for
9 additional investigations, I will seek comments from the
10 parties in interest and I will make a determination as to
11 whether or not those proposed investigations are in -- are
12 necessary and proper in the context of this case.

13 Again, the goal here is not to reinvent the wheel.
14 I don't want to spend another tens of millions of dollars on
15 an investigation that's going to tell me we've already done
16 all these investigations and here's how they've concluded.
17 I'm not going to give any guidance at this point on the cost
18 of that initial investigation. I think it can be done
19 relatively inexpensively, compared to what other costs in
20 this case have been so far. I'm talking about a low seven-
21 figure number, a very low seven-figure number.

22 I do want to address the three issues that the
23 Third Circuit raised and Mr. Bromley talked about these and
24 Ms. Richenderfer talked about these. One is the conflict
25 issue that the Court said has been raised repeatedly. I'm

1 not sure where that comes from. I'm not sure where it was
2 raised beyond the motion to approve the retention of Sullivan
3 & Cromwell in these cases.

4 I held a contested evidentiary hearing and before
5 that hearing occurred, the U.S. Trustee withdrew its
6 objection after Sullivan & Cromwell had provided additional
7 information. There was still a creditor who had obligated and
8 we went forward and the allegation was that Sullivan &
9 Cromwell had done work for the debtors prepetition and,
10 therefore, should be precluded from representing the debtors
11 in the bankruptcy case.

12 I heard evidence. The objecting party had a right
13 to take discovery and to present his own evidence. He didn't
14 do either. And I concluded after that hearing that Sullivan
15 & Cromwell did not have a conflict and that was based on,
16 partially on Section 1107(b), which states, specifically,
17 that the fact that a professional does work for a debtor
18 prepetition does not mean that they're automatically excluded
19 from representing the debtor in a 327. And there was no
20 other evidence submitted at the hearing that led me to
21 believe that there was any conflict of interest.

22 But that leaves me with the dilemma that the Third
23 Circuit raised as an issue. So I think the examiner should
24 look at whether there was an examination -- excuse me --
25 whether there are conflicts of interest involving Sullivan &

1 Cromwell. That was the only one that was objected to. All
2 the others were not objected to. There's no reason to look
3 into any of the others, as far as I'm concerned at this
4 point, and determine whether or not there was a conflict.

5 Again, not reinventing the wheel. Look at what
6 was submitted at the hearing. Look at what my ruling was and
7 make a report as to whether or not the examiner believes
8 there is any other potential conflict.

9 The Third Circuit also addressed the U.S.
10 Trustee's concern about reports of widespread fraud at the
11 debtors and that employees were still working for the
12 debtors. Mr. Bromley just told me that all of the employees
13 have been removed. I don't know if that includes everybody
14 or just the ones who may have been involved in the fraud. I
15 don't know at this point. But I think that is something that
16 can be addressed in the broader scope that I outlined earlier
17 that the Court -- the examiner can look at: what was -- what
18 investigations have been conducted and give a report on
19 whether or not the examiner believes any other investigations
20 need to be conducted.

21 And, finally, the Third Circuit raised the issue
22 of the debtors' use of its cryptocurrency, FTT, to inflate
23 the value of FTX in Alameda Research. And the Court
24 specifically said the report could bring the practice under
25 further scrutiny, getting potential investors to undisclosed

1 credit risks in other crypto companies and allow the Court to
2 consider greater public interest when approving the debtors'
3 reorganization plan.

4 And, again, I think this is something that can be
5 addressed in the broader scope of review that I talked about.
6 Look at the investigations that have been done. This is
7 something that's well in the public knowledge, everybody. I
8 think this is -- it's been in the press. I've seen it, where
9 not just, you know, concerns have been raised by third
10 parties about crypto companies creating their own
11 cryptocurrency and then inflating the price, because they
12 also control the sale and the process of getting that crypto
13 out into the market and they can manipulate the market if
14 they're on both sides of the transaction.

15 I don't know what the debtors have done in terms
16 of looking at that part of it, but again, it's something that
17 can be addressed in the broader scope of review by the
18 examiner. Look at what investigations have been done and
19 provide a report that would give some -- I'm trying to think
20 of a good word to describe it -- could provide parties with
21 an understanding of how this process worked at FTX so that as
22 the Third Circuit said in other cases, parties might be able
23 to take that into account in making their decision to invest.

24 On the question of when this process will be done,
25 again, I can't really say at this point how long this is

1 going to take. Like I said, I think 30, 45 days after
2 appointment would be sufficient at this point, given the
3 scope of the examination that I'm outlining here and this is,
4 as I said, my preliminary. So if the U.S. Trustee or any
5 other party believes that there is additional investigations
6 that need to be done, they can raise those at the time the
7 motion to appoint the examiner is put before the Court.

8 And I would like to see the examiner -- the motion
9 to appoint the examiner and the scope of examination at the
10 same time. I don't want to have an examiner -- I don't want
11 to have a two-step process. I don't want to appoint an
12 examiner and then have to wait another three, four weeks or a
13 month to get a report on what the scope of the examination is
14 going to be and then have to have further hearings on that
15 point. I want it all done at one time. Appoint the
16 examiner, who it's going to be, and what the scope of the
17 investigation is going to be, and we can get that all done at
18 one time and shorten the process from what we did in Cred.

19 Any questions? Concerns?

20 MS. RICHENDERFER: No questions, Your Honor.

21 MR. BROMLEY: There's no questions from the
22 debtor.

23 THE COURT: Mr. Pasquale?

24 MR. PASQUALE: No, thank you, Your Honor.

25 THE COURT: Okay.

1 MR. PASQUALE: We understand.

2 THE COURT: All right. So I think that will
3 address the issues, the concerns that the Third Circuit had
4 and my concerns about trying to control the costs of this
5 investigation, because, as I said, I think left to an open
6 process, it could result in tens of millions of dollars. I
7 think at the original hearing, I said it could go up to a
8 hundred million dollars if this was a broad-based
9 investigation starting all over from scratch.

10 And I don't think we need to do that in this case
11 because of the investigations we already have in hand, which
12 have been extensive, from what I understand, okay.

13 All right. Thank you.

14 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

15 THE COURT: I'm going to move on to the adversary
16 proceeding issue. This is the question about appointment of
17 a mediator; is that what we're talking about?

18 MR. EHRENBERG: Good afternoon, Your Honor.

19 Stephen Ehrenberg, Sullivan & Cromwell, on behalf of the
20 plaintiffs in the adversary proceeding. I think that's
21 right.

22 THE COURT: Okay. Go ahead.

23 MR. EHRENBERG: Thank you, Your Honor.

24 As we indicated in our letter, we have no
25 indication that the defendants in this action are, at all,

1 serious about resolution at this time and, in fact, have
2 spent quite a lot of time and energy launching collateral
3 attacks on the entire Chapter 11 proceeding.

4 Since the letters were exchanged on this, the
5 principals in these actions have had some limited
6 discussions, very preliminary, but nothing that changes our
7 view about the ripeness of the potential mediation at this
8 time and we think the status of the case indicates that this
9 is just not the right time.

10 Expert discovery has not begun at all in this
11 action and we think in this case, in particular, there are
12 important issues around valuation and other matters that are
13 really going to need to be illuminated before the parties can
14 really make any significant movement.

15 Mediation is obviously going to require a lot of
16 preparation and there has to be something in terms of
17 material for the mediator to work with, like the expert
18 opinions that are going to be rendered in this action. So
19 right now, there's very little for a mediator to go on,
20 beyond what is in the motions to dismiss that are not yet
21 fully briefed and haven't been argued yet.

22 Discovery is also still, in our view, not
23 sufficiently advanced to make it likely to be a fruitful
24 exercise for the parties to mediate about what the facts are
25 or what the value is. In Plaintiffs' view, the mediation

1 ought to be had at a much more advanced stage of the case to
2 have any likelihood of success. This is not simply a matter
3 of identifying a mediator and getting something on a calendar
4 so that we have it in the event that we need it.

5 It takes a lot of work to identify and to agree on
6 a mediator and, you know, there's no reason to think that
7 that is going to be a simple exercise in this case, any more
8 than it would be in any other case.

9 And once we have something on the calendar, all of
10 the parties are going to have to begin working on that
11 mediation sufficiently in advance of whatever date we would
12 choose in order to be prepared for it or we have to conclude
13 months in advance that we still think it's not likely to be
14 fruitful. So all of that to say is -- and then we're going
15 to find ourselves right back in a conference like this one.

16 So all of that to say, Your Honor, we think the
17 right time to do this is when the case is more advanced and
18 when the parties have a better sense of the claims and
19 defenses of their adversary.

20 THE COURT: Give me an idea what the case is
21 about. What are the valuation issues that you're talking
22 about?

23 MR. EHRENBERG: Your Honor, this is a case to
24 avoid the acquisition of a company called Digital Assets AG
25 by FTX. The company paid in excess of \$300 million for this

1 company and we contend that it was not worth anywhere near
2 that amount and that the debtor didn't receive reasonably
3 equivalent value. We've alleged actual fraud in the
4 transfer.

5 So this is about avoiding a corporate acquisition.

6 THE COURT: Okay. Let me hear from the
7 defendants.

8 MR. ROSENBLAT: Good afternoon, Your Honor. Heath
9 Rosenblat of Morrison Cohen on behalf of Patrick Gruhn, Robin
10 Matzke, and Lorem Ipsum.

11 Your Honor, this has kind of blown up into
12 something that we did not anticipate with our letter as we
13 spoke with Mr. Ehrenberg yesterday about. Under Section 6 of
14 the order, it says that we're supposed to file stipulation by
15 January 24th. We were unable, after a meet-and-confer, to
16 reach even agreement on an individual to be a mediator and we
17 just wanted to notify the Court of the status of the
18 situation so that the Court didn't need to do anything going
19 forward, as per the order.

20 We, to kind of rebut some of Mr. Ehrenberg's
21 comments, though, we do think it makes sense to agree on an
22 individual now. And we're not pushing for a mediation
23 tomorrow, we just want to have, I guess the person and the
24 system in place for when it is ripe. We're not disagreeing
25 that it isn't ripe at this particular time, but we just don't

1 understand why we can't agree on an individual and we also
2 just want to make the Court aware of the fact that we
3 complied with the CMO, we met and conferred, and what the
4 status of that meet-and-confer was, Your Honor.

5 THE COURT: All right. What are we --
6 Mr. Ehrenberg, what are you talking about in terms of
7 additional -- the discovery that you want to take before you
8 get to a mediation process? I mean, the appointment of a
9 mediator shouldn't take that long, I mean, it can be done
10 fairly quickly.

11

12 MR. EHRENBERG: Yes, Your Honor, we're still at a
13 very early stage of discovery. We are in document discovery
14 as of now. There have been no depositions. There are no
15 depositions scheduled. Expert reports are not due until
16 June, so there is a fair amount of work to do before the
17 parties really have a solid sense of what the issues are.

18 And in our view, knowing what those issues are
19 contributes to each party being in the best position to
20 identify a good mediator and we don't know today. Maybe the
21 parties are going to be closer on issues of, you know, for
22 example, solvency, than they think they are today.

23 So we think there is benefit in pushing this out a
24 little bit until the parties are further along, in fact
25 discovery, and, indeed, into expert discovery.

1 THE COURT: How long are you talking about?

2 MR. EHRENBERG: Our expert reports are due in
3 June. Theirs are due, I want to say, roughly, 30, 45 days
4 after that. And I think somewhere in that neighborhood, the
5 parties will have their replies, but I think the parties will
6 have a materially better understanding of the state of play
7 on the important issues in this case.

8 THE COURT: Okay. Mr. Rosenblat, I take it from
9 your comments, you're not contesting the idea that now is not
10 the right time to do a mediation, that there needs to be some
11 discovery?

12 MR. ROSENBLAT: Yes, Your Honor.

13 And Mr. Ehrenberg presents a fair depiction of the
14 timetable that we're dealing with.

15 I guess our confusion at this point is, this
16 provision in the CMO, which seems to be standard with the
17 debtors' other CMOs was proposed by the debtor and they're
18 the ones who put the date in and we agreed on the date. And,
19 again, we were just technically trying to comply with the
20 date. Again, I don't understand why this has turned into
21 this type of issue.

22 But we'll work with the debtor. It's a fair point
23 that Mr. Ehrenberg makes that as we get further along in the
24 process, that may inform who we go with. But I also think,
25 given that we've all done this enough, to some of the names

1 that were being thrown around by us, would have complied with
2 that at this point anytime, Your Honor.

3 THE COURT: All right. Well, let's go ahead --
4 and I understand it was put in the CMO. Sometimes things get
5 put in and then parties realize later, we really need to have
6 a little bit more time. There's not the right approach at
7 this juncture. So let's go ahead and get the discovery done
8 that the parties think need to be done and we can come back
9 later to -- well, hopefully, you can meet and confer and come
10 up with a mediator once the time is appropriate. If you
11 can't, I'm here and I can get something done fairly quickly
12 if I need to appoint somebody.

13 MR. EHRENBERG: Thank you, Your Honor. We
14 appreciate being heard today.

15 THE COURT: Okay. Thank you.

16 MR. ROSENBLAT: Thank you, Your Honor.

17 THE COURT: Okay. Thank you.

18 Anything else for today, Mr. Bromley?

19 MR. BROMLEY: No, Your Honor. That's all we have
20 for today. Thank you.

21 THE COURT: Okay. Going back to the -- just on a
22 mandate issue, I'm hoping that the parties can meet and
23 confer. I'll confess I know very little about appellate
24 procedure as I sit here at this moment. I don't know what
25 the requirements are. I don't know if you can, for example,

1 file something under CNO or COC as we do in the Bankruptcy
2 Court up in the Third Circuit. But let's see if there's a
3 way to get that done fairly quickly, hopefully by the end of
4 the week, maybe, if possible, so we can get this process
5 going.

6 MR. BROMLEY: We will coordinate with the U.S.
7 Trustee's Office, Your Honor, on that and move as quickly as
8 possible.

9 THE COURT: Okay. And if I wasn't clear, I'm
10 hoping, also -- I can't direct you to do it -- but I'm hoping
11 that the parties will sit down and talk about this issue of
12 the scope and who the examiner is going to be and what kind
13 of examiner you want to have doing this examination.

14 MR. BROMLEY: We're certainly prepared, on the
15 debtors' side, to do that, Your Honor.

16 THE COURT: Okay. Excellent.

17 All right. Thank you very much.

18 MS. RICHENDERFER: And, again, Your Honor, we will
19 consult with the debtor and all the interested parties in
20 doing so.

21 THE COURT: Okay. Thank you very much. I
22 appreciate it.

23 All right. Thank you. That's it for today.

24 We are adjourned.

25 COUNSEL: Thank you, Your Honor.

1 THE COURT: Thank you.

2 (Proceedings concluded at 2:55 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

6

7 /s/ William J. Garling

January 24, 2024

8 | William J. Garling, CET-543

9 | Certified Court Transcriptionist

10 | For Reliable

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